

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

United States of America, )  
                                )      **ORDER DENYING DEFENDANT'S  
Plaintiff,                 )      MOTION TO SUPPRESS EVIDENCE  
                               )**

vs.                         )  
                               )  
Jerald Vincent Proell,   )      Case No. 1:05-cr-082  
                               )  
Defendant.                 )

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Before the Court is the Defendant Jerald Proell's "Motion to Suppress Evidence" filed on April 19, 2005. The Defendant seeks to suppress evidence seized from two searches of his residence located at 79 4<sup>th</sup> Avenue SW in Garrison, North Dakota, on April 6, 2005. The searches in question were executed based upon two search warrants issued by Judge Bruce A. Romanick of the South Central Judicial District in the State of North Dakota. The Defendant challenges the searches for lack of probable cause, due in part to alleged false statements or misleading information provided to Judge Romanick, a so-called Franks<sup>1</sup> challenge. The Government has filed a response opposing the motion. See Docket No. 44.

This is the second such motion filed by the Defendant in this case. The Defendant first challenged the searches in a motion filed on October 17, 2005. See Docket No. 19. The Court held an evidentiary hearing on that motion on November 3, 2005, and subsequently denied the motion by way of an order dated November 7, 2005. See Docket Nos. 26-27. In doing so, the Court found that there was a substantial basis in the record for Judge Romanick to find probable cause in regards to both warrants, and found that the Defendant failed to meet his burden under Franks. Id.

Since that time, a superseding indictment has been filed. See Docket No. 33. However, the

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<sup>1</sup>Referring to the United States Supreme Court case of Franks v. Delaware, 438 U.S. 154, 155-56 (1978).

Defendant's challenge to the searches remains the same.<sup>2</sup> The Court has again carefully reviewed the record, and finds no basis to alter or modify its previous finding in this matter. The Court incorporates by reference its November 7, 2005, Order and **DENIES** the Defendant's Motion to Suppress Evidence. (Docket No. 38).

**IT IS SO ORDERED.**

Dated this 8<sup>th</sup> day of May, 2006.

*/s/ Daniel L. Hovland*

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Daniel L. Hovland, Chief Judge  
United States District Court

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<sup>2</sup>It is the Court's understanding that the motion is being filed as a safeguard for appeal purposes.